Supreme Court, U.S.
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No. 93-241

In The

# Supreme Court of the United States

October Term, 1993

RUTH JAFFE,

*Petitioner,*

vs.

HARDY M. SNOW, JR. and ACCREDITED SURETY & CASUALTY COMPANY, INC.,

*Respondents.*

**Petition For Writ Of Certiorari To The District Court Of Appeal Of The State Of Florida, Fifth District**

## RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## OPINIONS BELOW

The opinion of the Fifth District Court of Appeal of the State of Florida is reported at 610 So.2d 482 (5th DCA 1992), *cert. denied*, ___ So.2d ___ (Fla. 1993). The opinion of the Ninth Judicial Circuit, in and for Orange County, Florida, granting summary judgment to the respondents is set forth in Appendix 1.

## STATUTORY PROVISION

The respondents submit that there are no constitutional provisions or treaties brought into question by the instant case so that this Court should summarily deny the petition for writ of certiorari and award damages and costs against the petitioner pursuant to Rule of the Supreme Court 42 and Federal Rule of Civil Procedure 11.

## JURISDICTION

Although the petitioner is attempting to invoke the jurisdiction of this Court pursuant to 28 U.S.C., section 1257(a), by alleging that the state court decision violates the extradition treaty with Canada, such is in fact a falsity as the crimes committed by Mr. Jaffe were not extraditable offenses.

## COUNTERSTATEMENT OF THE FACTS

The actual facts of the instant case, rather than the fanciful imagination and wishful thinking of the facts set

forth in the Petition for Writ of Certiorari, unequivocally show that the instant case is not worthy of this Court's consideration. The case does not involve a federal question that would invoke the jurisdiction of this Court. In order for a correct determination, however, the respondents set forth the following statement of the facts. The following facts are the facts as found by the trial court and affirmed by the Fifth District Court of Appeal[1]:

> For the purpose of stating the undisputed material facts in this judgment, this court has relied upon portions of plaintiffs complaint, motion, supporting memorandum, appendices and facts appearing in three reported appellate opinions: *Jaffe v. State*, 438 So.2d 72 (Fla. 5th DCA 1983) ("*Jaffe I*"); *Jaffe v. Sanders*, 463 So.2d 318 (Fla. 5th DCA 1985 ("Jaffe II"); and *Kear v. Hilton*, 699 F.2d 181 (4th Cir. 1983).
>
> The material undisputed facts necessary for the disposition of the cross motions are as follows: In 1980, Sidney L. Jaffe ("Mr. Jaffe"), *a U.S. Citizen*, was charged in the Circuit Court of Putnam County, Florida, with 28 counts of violations of the "Florida Uniform Land Sales Practices Law," section 498.033(3), Florida Statutes (1979). A violation of this statute is a felony crime. After his arrest, Mr. Jaffe posted a $137,500.00 bail bond written by Accredited in order to secure his release from jail, and immediately went to Canada *where he and Mrs. Jaffe took up residence*. On the day he was scheduled for trial, Mr. Jaffe failed to appear. A motion for continuance filed by his attorneys was denied, a

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[1] All facts set forth in the instant response were facts in the record on appeal before the Fifth District Court of Appeal.

warrant was issued for his arrest, and Accredited's bail bond was forfeited. The prosecuting attorney then filed a criminal charge of Failure to Appear, section 843.15(1)(a), Florida Statutes (1979). A violation of this statute is a felony crime. The prosecuting attorney subsequently made two applications to the Florida Governor seeking to extradite Mr. Jaffe from Canada, both of which applications were denied. The record does not show the basis for the denials. Mr. Jaffe remained in Canada and "exhibited a determination to remain there in violation of his undertaking to return to Florida to answer the charges." *Kear* at 181,2.

Snow and Accredited then hired two professional bail recovery agents, Johnsen and Kear, to go to Canada, apprehend Mr. Jaffe and surrender him to the Putnam County Sheriff, which they did. Mr. Jaffe was tried, convicted, and sentenced on all 28 counts of Unlawful Land Sales Practices; however, his convictions and sentences were later reversed. His conviction and sentence for Failure to Appear was affirmed. (Jaffe 1). Contrary to plaintiff's assertion, the Unlawful Land Sales Practices charges were not "unfounded." As the district court of appeal made clear in Jaffe II, the reversals were not based upon insufficient evidence but rather upon the legal insufficiency of the charging document.

Immediately upon his release from imprisonment, Mr. Jaffe returned to Canada. In 1985, Mr. Jaffe and Mrs. Jaffe brought suit in the Supreme Court of Ontario, Canada, against Snow and Accredited and other defendants seeking money damages for Mr. Jaffe's tortious

> abduction. Snow and Accredited appeared in the action through Canadian counsel, and after their motions to dismiss based on grounds of want of personal jurisdiction and form non conveniens were denied, declined to further defend the action. On November 22, 1990, the Canadian court entered a separate judgment in favor of Mrs. Jaffe only against Snow and Accredited awarding her general damages in the amount of $25,000 Canadian dollars; special damages in the amount of $903,481.47 U.S. dollars and $88,089.33 U.S. dollars and $62,458.74 Canadian dollars, the total amount to bear interest at the rate of 14% per annum.

(Footnotes omitted) (emphasis added[2]) (Appendix 1).

The court then turned to the law in which he concluded that there were no treaties or statutes, state or federal, which compelled the courts of Florida to recognize foreign nation judgments, nor did the full faith and credit clause of the United States Constitution require it. *See also, Jaffe v. Snow,* 610 So.2d 482 (Fla. 5th DCA 1992).

> Rather, recognition or non-recognition of such judgments in this state depends upon Florida common law principles of judicial comity. *Warren v. Warren,* 75 So. 35 (Fla. 1917); *Parker v. Parker,* 21 So.2d 141 (Fla. 1945); *Ogden v. Ogden,* 33 So.2d 871 (Fla. 1947); *Pawley v. Pawley,* 46 So.2d 414 (Fla. 1950).

The court next cited to the Florida supreme court decision in *Bechwith v. Bailey,* 161 So.2d 577, 581 (Fla.

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[2] A Canadian has also found that Mr. Jaffe was a United States citizen when the offenses occurred and when Mr. Jaffe jumped bond.

1935). wherein the court, citing to the leading case from this Court, *Hilton v. Guyot*, 159 U.S. 113, 16 S.Ct. 139, 40 L.Ed. 95 (1895) recognized that

> . . . comity . . . (in the legal sense) is neither a matter of absolute obligation or of mere courtesy and goodwill. It is . . . the recognition which one nation or state allows within its territory to the judicial acts of another nation or state, having due regard to both international duty and convenience, *and to the rights of its own citizens*. . . .

(Emphasis added)

The trial court then continued its reasoning by declaring that under Florida common law, the doctrine of comity precluded recognition of a foreign nation judgment where "special reasons" exist, citing to *Hilton*, "a foreign nation judgment may be contrary to a state's public policy if it conflicts with the state's interest, is inconsistent with its laws and/or is repugnant to fundamental notions of what is decent, equitable and just in the forum state [cites omitted]." The Fifth District acknowledged that in Florida in the overwhelming number of cases, courts recognize and enforce the judgments of other nations. The court specifically noted that this was particularly true of countries having a system of jurisprudence which has developed from the same historical roots as our own, such as Canada. "However, no jurisdiction will give comity to the judgment of another nation that offends the jurisdiction's public policy and sense of moral justice [citing to Restatement (Second) of the Foreign Relations Law of the United States, section 482 (1987)]."

The Fifth District held that there were many public reasons why a Florida court would refuse to recognize and enforce the Canadian judgment.

The court then found that there were three different special reasons as to why the Canadian judgment should not be enforced against the defendants. First, the court declared that Canadian tort law under which Mr. and Mrs. Jaffe's causes of action were brought are different from Florida law. The trial court then cited to section 903.02 and 903.29, Florida statutes (1979) and *Register v. Benton*, 75 So.2d 187 (Fla. 1975), for the proposition that both under the common law and statutory law of Florida, a surety such as Accredited could arrest the principal within the state, both before and after the forfeiture of a bail bond. The Fifth District agreed.

Additionally, under Florida common law, the surety could delegate to another person the right to make the arrest. The court reasoned further that had the apprehension of Mr. Jaffe by defendants' bail recovery agents occurred within the territorial boundaries of Florida, Mr. and Mrs. Jaffe would have had no cause of action under the tort laws of the state. The court continued that of even more significance, the public policy of Florida as expressed through its decisional and statutory law expressly favors and sanctions the apprehension of a bail jumper within the state by a surety or his agent.

The second special reason given is that Mr. Jaffe's act of failing to appear in court was a breach of his contractual obligation to Accredited under the bail agreement and a crime against the State of Florida for which he was duly convicted. "It was his wrongful criminal act in

jumping bail which directly caused Snow and Accredited to commit the acts found to be tortious in Canada which formed the basis of Mr. and Mrs. Jaffe's Canadian action against them." Also important is the fact that Mr. Jaffe declared, in the bail agreement, that his residence was California and that he had lived there for three (3) years. Consequently, under Mr. Jaffe's own admission, he was *not* a citizen of Canada but, rather, an American citizen brought back to America for American justice.

The Fifth District found that Sidney Jaffe is a fugitive from justice in the eyes of the Florida courts, having "jumped bond" in this jurisdiction not once, but twice. "And, there are still criminal charges pending against him in this state from which he has fled rather than faced. Simply stated, 'a fugitive from justice is not entitled to call upon the resources of court for determination of his case.' *Garcia v. Metro-Dade Police Department*, 576 So.2d 751, 752 (Fla. 3d DCA 1992). *United States v. One Lot of U.S. Currency Totalling $506,537*, 628 F.Supp. 1473, 1475 (S.D. Fla. 1986). Stated another way, a fugitive from justice 'cannot eat his cake and have it too.' *United States v. Eng*, 951 F.2d 461, 462 (2d Cir. 1991)."

In summation, the trial court declared that if Jaffe had obtained and sought to enforce a Canadian judgment against defendants here, to allow it would not only be inconsistent with this state's interest but patently inequitable for equity says that "no one shall be permitted to take advantage of his own wrong, or found any claim upon his own inequity or profit from his own crime," citing to *Ashwood v. Patterson*, 49 So.2d 848, 850 (Fla. 1951).

The Fifth District, on this issue, held as follows:

> Finally, Florida has a well-established public policy that our courts will not permit nor tolerate a person to benefit from his own wrongful act. In this case, Sidney Jaffe breached his contract or bond given to Accredited and accepted by the Florida court that he would not leave his California residence without Accredited's permission, and that he would return promptly to face the criminal charges brought against him. *See Reese v. United States*, 76 U.S. 13, 19 L.Ed. 541, 9 Wall. 13 (1869). He failed to do so. Although his eventual forceful return by Accredited was wrongful in Canada's eyes, he, too, was at fault for not honoring his bond. Two wrongs do not make a rights [sic], and neither wrongdoer should profit. *McMichael v. McMichael*, 158 Fla. 413, 28 So.2d 692 (1947).

(Footnote omitted)

The Fifth District disposed of Ruth Jaffe's argument that she should not be placed in her husband's shoes for purposes of recognition and enforcement of her judgment as follows:

> Ruth Jaffe argues she should not be placed in her husband's shoes for purposes of recognition and enforcement of her judgment. However, the nature of her cause of action is derivative and it was necessarily born out of Sidney Jaffe's tort suit for wrongful kidnapping. She was not kidnapped. Sidney was. Any loss of consortium on her part is deemed to be a derivative cause of action in Florida.

(Footnote omitted). In her state court appellate brief, Ruth Jaffe admitted that her damages were those caused

by the kidnapping of her husband by Snow and Accredited.

The trial court declared that it was holding the way it did because of the peculiar facts and circumstances of this case in that it fell within those very few exceptions where an American state court should decline to enforce a foreign nation's judgment. (R. 109). The reason no one case is authority for the reversing of another case is precisely because of what the trial court ruled, *i.e.*, that peculiar facts and circumstances of each case are what are applicable and that this one was so bizarre and unusual that it fell within one of those very few exceptions wherein the trial court should decline to enforce this particular foreign nation judgment. The Fifth District upheld the trial court on the grounds set forth as well as on the Federal fugitive from justice doctrine: "Appellant, on the one hand, wields a sword against our judicial system by escaping criminal prosecution. On the other hand, appellant attempts to shield himself, with the protection of his rights in the civil courts."

Additional facts that were before the state courts are also necessary in order for this Court to comprehend just how frivolous the instant petition is and for a correct determination as to where the equities lie in the instant case in order to invoke the principle of comity and the jurisdiction of this Court.

The following facts are necessary in order to show how Mr. Jaffe's actions have constituted an abuse of the judicial systems in both state and federal courts. Although the instant lawsuit involved a request for the enforcement of a foreign money judgment in favor of

*Mrs. Sydney Jaffe*, pursuant to well-established Florida law, Mrs. Jaffe has no cause of action against these defendants, because she only has a loss of consortium claim, which is derivative of Mr. Jaffe's claim. Mrs. Jaffe has acknowledged that she only has a loss of consortium claim as evidenced by her State of Claim attached as Appendix 4. In other words, if Mr. Jaffe has no legally enforceable claim against these defendants, then Mrs. Jaffe likewise has no legally enforceable claim. Therefore, a complete history of the illegal, unethical, and contemptuous actions of Mr. Jaffe must be set forth in their entirety.

Even assuming *arguendo* that Mrs. Jaffe had a valid claim against these defendants, which the defendants steadfastly maintain she does not, it would be against public policy to enforce the money judgment simply because of the numerous and sundry times Mr. Jaffe has abused the judicial system. The additional fact that he is still a fugitive from the state of Florida and, therefore, cannot return to enforce a judgment in his own name buttresses the respondents' position that this Court still should not enforce the foreign money judgment even if Mrs. Jaffe had a valid claim.

The genesis of this action occurred in 1972 when Continental Southeast Land Corporation bought a large tract of Florida land, subdivided it into more than twenty-eight hundred lots, and began selling the lots to individuals on installment contracts payable to Continental. At the same time, Continental was borrowing from individual investors. *Jaffe v. Grant*, 793 F.2d 1182, 1184 (11th Cir. 1986). Sydney Jaffe was vice-president of Continental. Through a series of transactions in 1976 and 1977,

Continental's interest in the remaining land and the vendee accounts were transferred to Meadow Valley Ranchos, Inc., Ruby Mountain Construction & Development Corp., and Atlantic Commercial Development Corp., (collectively, "The Corporations"). Sydney Jaffe was president of each corporation. Shortly thereafter, Continental defaulted on payments to its investors. The investors responded by filing suit in the Circuit Court of Putnam County, Florida, against Continental and The Corporations to set aside the transfers of land and the vendee contracts as fraudulent and to appoint a receiver for Continental. *Barbara Raymond, et al. v. Continental Southeast Land Corp.*, No. 78-416.

In June, 1979, Jaffe caused Continental to file a Chapter XI petition under the Bankruptcy Act. *Jaffe v. Grant, supra*, 793 F.2d at 1184. In January, 1980, the bankruptcy court adjudicated Continental bankrupt and appointed Charles Grant as trustee. After the bankruptcy court lifted the statutory automatic stay, the state court in the *Raymond* case substituted the trustee grant for Continental and realigned him as a plaintiff.

In March, 1981, the state court entered a final default judgment setting aside the transfers, holding The Corporations liable and was ordered to return the sums collected from the contract vendees and ordering an accounting. The Corporations appealed the state Court's March, 1981, order. In the interim, they refused to make the accounting and were held in contempt by the trial court. Note that this is the first instance of contempt.

Because of their continuing contempt, the appellate court dismissed The Corporations' appeal of the state

Court's March, 1981, order. *Atlantic Commercial Development Corp. v. Raymond*, No. 81-560 (Fla. 5th DCA Sept. 10, 1981). Note that this is the second occasion that prompted Jaffe being held in contempt.

In August of 1980 when Jaffe was arrested in Florida and charged with twenty-eight (28) counts of unlawful land sales practices, he obtained bail in the amount of $137,500 from Accredited Surety & Casualty Company and was released from custody. He then returned to his home in Toronto, Ontario, Canada. Jaffe did have a home in Canada but did not become a citizen until after he had become a fugitive from the State of Florida. Mr. Jaffe did not become a citizen of Canada until 1981. Mr. Jaffe had claimed three (3) years of residence in San Francisco on the bail bond application with Accredited.

Jaffe failed to appear for his pre-trial conference in his criminal case and the judge issued a warrant for his arrest. On May 18, 1981, his case was called for trial and again Jaffe failed to appear. A second arrest warrant was issued. The judge also ordered that the bond be estreated and directed the State attorney to immediately commence extradition proceedings to procure Jaffe's return from Canada. The State Attorney submitted two applications for extradition to the Governor of Florida, both of which were disapproved as to form by the Attorney General of Florida. The reason they were disapproved is that the crimes were not extraditable.

On May 15, 1981, the eve of his criminal trial, Jaffe and The Corporations filed an action in the United States District Court for the Middle District of Florida charging that trustee Grant and others had conspired to violate

their civil rights and sought to restrain the state criminal case. Trustee Grant responded with a counterclaim seeking enforcement of the *Raymond* judgment for an accounting against Jaffe individually, as well as against The Corporations on the ground that The Corporations were merely his alter egos.

During the course of these proceedings, Jaffe began his **repeated** actions of failing to appear at scheduled depositions. Trustee Grant moved for sanctions for Jaffe's failure to appear at scheduled depositions, and the District Court granted the motion and awarded attorney fees. *Jaffe v. Grant, supra,* 793 F.2d at 1185. Note that this is the third occasion of contempt. When the attorney fees were not paid as ordered, Trustee Grant filed a renewed motion for sanctions, resulting in an additional award of fees incurred in connection with Grant's seeking Compliance with the first order. Note that this is the fourth occasion of contempt.

During this time, *Jaffe, et al.* had also failed to timely comply with the court's order directing them to respond to the trustee's interrogatories and request for production. Jaffe, *et al.* did respond four days late, but in an incomplete and evasive manner, refusing to answer certain interrogatories and to produce certain documents. The court entered an order compelling them to produce a document and answer to interrogatories. Their responses were again non-responsive, evasive and incomplete. Again Grant moved for sanctions, this time asking that Jaffe, *et al.'s* answer to the counterclaim be stricken. The court granted the trustee's motion for sanctions "in light of [plaintiffs'] *flagrant and continued failure* to comply with discovery requests and court orders." (emphasis added).

Note that this is the fifth occasion of contempt. When Jaffe, *et al.* took no action to cure their failure to comply with the court's orders, the District Court struck Jaffe, *et al.'s* answers to the trustee's counterclaim and enter judgment by default. *Id.* Note that these are the sixth and seventh occasions of contempt.

In the *Raymond* action, Grant served a request for admission that The Corporations had received more than three million dollars from contract vendees at Continental. Again, The Corporations evaded answering and Grant moved to strike their answers to discovery requests as a sanction. The state court struck The Corporations' responses because of their evasive nature and deemed the request with respect to the three million dollar figure admitted. Note once again that this is the eighth occasion of contempt. On appeal of that ruling the Florida appellate court affirmed. *Ruby Mountain Construction & Development Corp. v. Raymond*, 409 So.2d 525 (Fla. 5th DCA 1982).

The state trial court then granted the trustee's motion for summary judgment and entered a supplemental final judgment in the amount of three million dollars plus interest. The Corporations appealed, but their appeal was dismissed as frivolous, with attorneys' fees for a bad faith appeal being assessed. Note that this is the ninth instance of contempt. *Atlantic Commercial Development Corp. v. Raymond*, No. 82-724 (Fla. 5th DCA June 30, 1982). Grant now has a five million dollar judgment in its favor against Jaffe in Canada.

Jaffe, however, did not seem to learn his lesson about the consequences of his failure to cooperate in discovery.

In the second lawsuit filed by Sydney L. Jaffe and Ruth M. Jaffe, defendant Accredited Surety & Casualty Company, Inc., moved for sanctions pursuant to Rule 37(d) Federal Rule of Civil Procedure on August 19, 1986. Note that this is the tenth occasion of contempt. Typical of the plaintiff, he moved to dismiss the action without prejudice pursuant to Rule 41(a)(2), Federal Rule of Civil Procedure on August 29, 1986. No. 85-1128-CIV-J-16 (United States District Court, Middle District of Florida, Jacksonville Division). (Appendix 3). Although the district court concluded that the actions should be dismissed, the court declared that it would be inclined to grant Accredited's request that the cause be dismissed with prejudice for the plaintiffs' failure to cooperate in discovery. *Id.* It should be noted that "Plaintiffs" is in the plural and includes both Sydney L. Jaffe *and* the instant plaintiff, Ruth M. Jaffe. The order of the court entered on November 5, 1986, specifically and unequivocally declared:

> The court would be inclined to grant said motion and dismiss this action with prejudice in light of plaintiff's flouting of the authority and jurisdiction of this court and the Federal Rules of Civil Procedure. *See, also, Jaffe v. Grant*, 793 F.2d 1182, 1189-90 (11th Cir. 1986).

(Appendix 3). Plaintiffs unjustifiably failed to appear at depositions noticed by Accredited and scheduled to take place in Jacksonville, Florida. *See*, Rule 3.04(c), *Local Rules of the United States District Court for the Middle District of Florida*. Further, plaintiffs defied the court's order to show cause entered on October 3, 1986, and failed to appear at the aforementioned hearing. In spite of plaintiff's conduct, however, the court concluded that it was divested

of jurisdiction to entertain Accredited's motion for sanctions when plaintiffs filed on August 29, 1986, their notice of dismissal pursuant to *Rule 41(a)(1), Fed. R. Civ. P.*, as to defendants, Hank M. Snow, Timm Johnsen, Daniel J. Kear, and Joseph Miller. This is the eleventh instance of contempt. *Id.*

The state courts based their decisions on Mr. Jaffe's conduct and that is the focus this Court should take. Whether or not Kear and Johnsen were criminally liable for the kidnapping of Mr. Jaffe has already been tried and determined and is not relevant in these proceedings except as background. Mr. Jaffe's conduct is what is at issue here since a money judgment awarded his wife for loss of consortium is sought to be enforced on grounds of equity and justness.

But now back to the facts. The District Court for the Middle District of Florida in Case No. 84-3747, the Honorable John H. Moore, II, made statement from the bench during a status conference. In particular, the court referred to Jaffe, *et al.'s* litigation tactics and their incessant changing of attorneys. Jaffe sought to recuse Judge Moore based on those statements. The Eleventh Circuit, however, held that the trial court did not abuse its discretion in denying Jaffe's recusal motion as the court's statements reflected its perception of the underlying facts of the case, Jaffe, *et al.'s* litigation tactics, and their incessant changing of attorneys. The Eleventh Circuit ruled that the district court's statements were based on knowledge the court had gained in a purely judicial context by presiding over this action and the habeas corpus proceeding filed by the Canadian government. *Jaffe v. Grant, supra,* 793 F.2d at 1189-90.

Jaffe had also alleged as an error in *Jaffe v. Grant* that the sanctions imposed for Jaffe, *et al.'s* refusal to comply with discovery orders were Draconian sanctions and unwarranted. The District Court had entered an order striking their answer and defenses to the trustees' counterclaim. Note that this is occasion for contempt number twelve.

As declared by the Eleventh Circuit:

> *Jaffe, et al.* proffered a laundry list of reasons why the sanctions imposed below are too harsh. Their first argument, perhaps a nadir of this frivolous collection, is that the deterrent value of this sanction could have been substantially achieved by use of one less drastic. At oral argument, counsel suggested that an award of costs might have been appropriate. However, such a suggestion flies in the fact of the record as well as the facts found by the District Court:
>
> > It should be further noted that sanctions in the form of attorney's fees have been imposed on plaintiffs during the course of this litigation. On January 25, 1982, attorney's fees were taxed against plaintiffs for their unjustified failure to attend scheduled depositions. Plaintiffs did not timely pay defendants the fees imposed by the court as sanctions and, therefore, further sanctions were imposed against plaintiff on February 16, 1982.
>
> It is abundantly clear to the court that the lesser sanctions contemplated by Rule 37, Fed.R.Civ.P., are not effective in compelling plaintiffs to conduct discovery in a timely and responsive manner.

*Id.*

In the same case, typical of an "innocent" criminal, Jaffe sought to place the blame for their long-standing refusal to comply with discovery on one of their former attorneys. Jaffe, *et al.* also argued that their failure to comply with the court's orders were due to inability. Purportedly, Jaffe was prevented from complying by his health problems and, later, incarceration at various correctional institutions. "However, neither Jaffe's alleged problems can excuse repeated non-responsive, evasive and incomplete answers to interrogatories and request for admissions. For example, Jaffe's alleged problems with his health, incarceration and attorneys cannot excuse the intentional misconduct of producing documents with portions torn off." *Id.* at 1190.

While Jaffe was incarcerated for his conviction for failure to appear at trial, he was indicted on one count of organized fraud, stemming from the same land sale activities. He was released from custody in October, 1983 and allowed to post bond on the fraud charge. He returned to Canada once again and once again failed to appear for trial on this charge. This is the only offense that comes within the extradition proceeding between Canada and the U.S. and the instant respondents were not involved in the posting of a bond for that offense. Consequently, the treaty has no application to the instant proceeding.

## REASONS FOR DENYING THE PETITION

### I. The Florida judgment below does not conflict with any international agreement between the United States and Canada nor any federal interest that would require the Florida court grant comity by enforcing the petitioner's judgment.

As made clear in the Counterstatement of the Facts, Mr. Jaffe was a United States citizen when brought back to the United States to face the criminal charges brought against him. The Canadian courts have also declared that to be a fact. (Appendix 4, at App. 6). Also made abundantly clear is the fact that the violations of the Florida Uniform Land Sales Practices Law committed by Mr. Jaffe are not extraditable offenses under the treaty with Canada. Both state courts found accordingly. The fraud count against Mr. Jaffe was the subject of a subsequent indictment against Mr. Jaffe. Although bonded out on the fraud count by another bonding company, for which Mr. Jaffe also jumped bond, whether or not the fraud count is extraditable is totally irrelevant to these proceedings or any other proceedings to which the respondents are parties. Mrs. Jaffe attempted to convince the Florida state courts of her factually inaccurate statements in order to commit a fraud on those courts but to no avail. Her fraudulent attempts should likewise be to no avail in this Court. Consequently, the *only* principle of law relevant to these proceedings is the principle of comity.

A foreign nation judgment is unenforceable as against public policy to the extent that it is repugnant to fundamental notions of what is decent and just in the state where enforcement is sought. *Ackermann v. Levine*, 788 F.2d 831, 841 (2d Cir. 1986). In the classic formulation,

a judgment that tends clearly to undermine the public interest is against public policy. *Id.* at 841. *Accord, Tahan v. Hodgeson,* 662 F.2d 862, 864 (D.C. Cir. 1981); *Overseas Inns S.A.P.A. v. United States,* 465 F.Supp. 968, 972 (N.D. Tex. 1988) (it is a settled principle of comity that deference need not be given to foreign judgments in face of significant countervailing public policy reasons); *Norkan Lodge Co., Ltd. v. Gillum,* 587 F.Supp. 1457, 1461 (N.D. Tex 1984). In *Hilton v. Guyot, supra,* the court defined the doctrine of comity as follows:

> Comity in the legal sense, is neither a matter of absolute obligation on the one hand nor of mere courtesy and good will upon the other, but is within the recognition which one nation allows within its territory to the legislation, execution or judicial acts of another nation, having due regard to both international duty and convenience, and to *the rights of its own citizens or of other persons who are under the protection of its laws.*

159 U.S. at 163-64, 16 S.Ct. at 143, 40 L.Ed. 95 (emphasis added). " 'Comity' summarizes in a brief word a complex and elusive concept . . . the degree of difference that a domestic form must pay to the act of a foreign government not otherwise binding on the forum." *Laker Airways, Ltd. v. Sabena, World Airlines,* 731 F.2d 909, 937 (D.C. Cir. 1984). As declared by the court in *Overseas Inns,* the search for finding precedent in comity cases is limited by the fact-oriented nature of the cases decided. *Overseas S.A.P.A. v. United States, supra,* 685 F.Supp. 971. Consequently, the facts of each particular case are of paramount importance.

Based on the above holdings and clear expressions by this Court it defies logic for the petitioner to argue that this Court or any state court was either obligated to enforce a Canadian judgment or that there are overriding federal interests that require the Florida courts to grant comity by enforcing the petitioners' judgment.

The courts below very carefully limited their rulings in the case to the facts presented. The trial court began its closing by declaring that "it should be stated that nothing in this judgment should be construed as condoning the acts of Snow and Accredited and their agents which caused the events in Canada. Now that the *Kear* case is on the books, the criminal laws of Canada and the extradition treaty between our two countries should provide a sufficient deterrent against that type of activity in the future." Any argument advanced by Jaffe that this case has wide-reaching implications is worthless in light of the state courts' disclaimers.

The respondents submit that it is of paramount importance for this Court to remember that none of the offenses for which the respondents bonded Mr. Jaffe out of jail are extraditable offenses listed in the treaty between the United States and Canada. Although fraud is an extraditable offense under the treaty, Mr. Jaffe was not charged with fraud until subsequent to Mr. Jaffe's return to the United States by Kear and Johnsen. Mr. Jaffe subsequently jumped bond when he was bonded out for the fraud offenses but that is a different story. The fact remains that the charges for which Mr. Jaffe was charged and for which the respondents posted his bond were not extraditable offenses under the treaty between the United States and Canada. Therefore, the respondents are

requesting Rule 11 sanctions be imposed against the petitioner and her attorneys because this fact alone makes the entire petition frivolous. That fact should have been known by the petitioner's attorneys as it is a fact published in an Eleventh Circuit opinion. *Jaffe v. Grant*, 793 F.2d 1182 (11th Cir. 1986). *See also, Jaffe v. Sanders*, 463 So.2d 318 (Fla. 5th DCA 1985).

Rather than the Fifth District's "opinion offer[ing] a safe haven from civil liability for those engaged in transport or kidnappings," the opinion tells citizens of the United States that they may not commit crimes in the United States, flee to a foreign country, take up residency, and attempt to come back to the state wherein the crimes occurred for which that citizen never paid his dues to society and expect to reap the benefits from his own wrongdoing. Surely such a message is in keeping with this Court's notion of what is right and just. Although the Canadian government may have been upset when the initial taking of Mr. Jaffe occurred, a recent Canadian court decision states Canada's position now that all the facts are known:

> We think the appeal from the sentences imposed by the trial judge should succeed. The trial judge rightly considered the offence to be a grave affront to the sovereignty of this country. Although it is not excused, the gravity of the affront is mitigated by the circumstances of the offence. In consideration of the surety putting up $137,000 U.S. to secure his freedom from jail and after being told by the surety that if he did not appear in court he would come and get him anywhere, Jaffe agreed in writing that the surety would have the right 'to forthwith apprehend,

> arrest and surrender' him. In violation to his obligations to the court which had released him from jail and to the prejudice of the surety's $137,000, Jaffe, *who was then an American citizen,* absconded and fled to this country where he managed to obtain Canadian citizenship. There is nothing favorable that can be said about his conduct.

(Appendix 4, at App. 6) (emphasis added).

A foreign judgment under comity principles is unenforceable as against public policy to the extent that it is repugnant to fundamental notions of what is decent and just in the state where the enforcement is sought. A judgment that tends clearly to undermine the public interest is against public policy. Applying those principles to the instant case, it defies all that is right and just to even give credence to Mrs. Jaffe's claim, much less even consider enforcing it.

## II. The Florida judgment below does not violate the petitioner's rights under the Fourteenth Amendment of the Constitution.

Mrs. Jaffe's claims against the respondents were based solely on the alleged kidnapping of Mr. Jaffe as made abundantly clear in her statement of claim filed against the respondents in the Canadian court. Mrs. Jaffe has not, as well as she cannot, claim any actions of the respondents aimed directly at her; she has only alleged that she suffered damages as a result of the actions by the respondents against Mr. Jaffe. Consequently, her claims against the respondents are derivative of Mr. Jaffe's.

The issue of whether or not Mrs. Jaffe's claim is derivative of Mr. Jaffe's is a matter of state law. Under well-established Florida law, Mrs. Ruth Jaffe's claim for loss of consortium is strictly and solely derivative of Mr. Jaffe's. *Davis v. Afbll*, 328 So.2d 204 (Fla. 1st DCA 1976); *Gates v. Foley*, 247 So.2d 40 (Fla. 1971). As declared by the *Davis* court, quoting to the *Gates'* opinion:

> The derivative cause of action for loss of consortium is subordinate to the primary action, and being so, that a judicial determination in the primary action as to the question of liability is binding upon the subordinate action for loss of consortium.

As Mr. Jaffe, under public policy reasons, would be precluded from having a foreign judgment enforced in his name, likewise Mrs. Jaffe is foreclosed by those same public policy reasons. Consequently, there is no federal question involved in the instant case. The cases relied on by the petitioner in her petition give absolutely no application to the instant case.

Mrs. Jaffe was not denied access to the courts. She had and took advantage of access to the courts but is simply complaining because she did not receive the decision she sought. One does not have a fundamental and/or constitutional right to a decision in their favor.

She additionally was not deprived a fundamental right – that of marital association – because of the alleged kidnapping of Mr. Jaffe. Mr. Jaffe is the one who deprived Mrs. Jaffe of marital association by committing crimes in the state of Florida and being jailed therefore. If Mr. Jaffe had stayed in the state of Florida the way he contracted

with respondents that he would, he would be incarcerated and would consequently have deprived Mrs. Jaffe of marital association.

Further, the respondents submit that it is ludicrous to suggest that Mrs. Jaffe was deprived of her liberty and property interests without due process of law. The mere fact that a person is unsuccessful in court in a matter involving life, liberty, or property does not show that there was a violation of the due process guaranty. *Worcester County Trust Co. v. Riley,* 302 U.S. 292, 58 S.Ct. 185, 82 L.Ed. 268 (1937). The Fourteenth Amendment does not raise a federal question in every case to test the justice of a decision. *New York & N.E.R. Co. v. Bristol,* 151 U.S. 556, 14 S.Ct. 437, 38 L.Ed. 269 (1893). Mrs. Jaffe has been fully heard in the regular course of judicial proceedings. The extent to which a decision is erroneous or the fact that it is contrary to previous decisions has been said to be immaterial. *Patterson v. Colorado,* 205 U.S. 454, 27 S.Ct. 556, 51 L.Ed. 879 (1907). Of course, the state court's decision is neither erroneous nor contrary to previous decisions.

The respondents submit that Mrs. Jaffe did not suffer a violation of any of her individual rights. As set forth in her statement of claim, Mrs. Jaffe alleged that her damages were caused by Mr. Jaffe's wrongful imprisonment. (Appendix 3, at p.24). Of course, Mr. Jaffe was not wrongfully imprisoned. The cases relied on by the petitioner have no application whatsoever to the case before this Court. Mrs. Jaffe was not denied the right to marry. *Zablocki v. Radhile,* 434 U.S. 374, 98 S.Ct. 673, 54 L.Ed.2d 618 (1978). Nor were her rights as a parent completely and irrevocably severed. *Santosky v. Kramer,* 455 U.S. 743,

102 S.Ct. 1388, 71 L.Ed.2d 599 (1981). Mrs. Jaffe certainly was not convicted of a crime of having her son and grandson plus second grandson who is the cousin of first grandson living with her. *Moore v. City of East Cleveland, Ohio*, 431 U.S. 494, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977).

None of Mrs. Jaffe's rights were violated as she sought damages that were exclusively and solely derivative of Mr. Jaffe's. Mrs. Jaffe set forth claims as follows:

> 62. The plaintiff Ruth Jaffe pleads that she has expended considerable time and effort to redress the wrongful actions of the defendants and in the administration of the affairs of the plaintiff Sidney Jaffe during the period of his wrongful imprisonment, and incurred expense in travel to and from Florida and otherwise to visit and to obtain the release of the plaintiff Sidney Jaffe from his wrongful imprisonment.
>
> 63. The plaintiff Ruth Jaffe further pleads that by reason of the foregoing she has suffered and continues to suffer serious damage, by reason of her mental and physical suffering, loss of income, the aforesaid expenditures, and the loss of guidance, care and companionship of the plaintiff Sidney Jaffe during the period of his imprisonment. The plaintiff Ruth Jaffe pleads that she has suffered and continues to suffer this damage in the City of Toronto.

*Id.* (Appendix 5)

For Mrs. Jaffe to now come before this Court and allege that her claims are not derivative of Mr. Jaffe's is as fraudulent as the other ground given for enforcing Mrs. Jaffe's judgment. Such should not be tolerated by this Court. Any monies that Mrs. Jaffe expended in traveling

to and from Florida to visit and obtain the relief of the plaintiff Sidney Jaffe should have been expended to visit him while in jail where Mr. Jaffe should be. Those damages relate solely to the alleged wrongs committed by the respondents to Mr. Jaffe, not Mrs. Jaffe.

The further claims as to damages are for loss of consortium which likewise is derivative of Mr. Jaffe's alleged kidnapping. The Fifth District summarized Mrs. Jaffe's loss of consortium claim as follows:

> The fugitive from justice doctrine bars any claim or defense that is solely derivative of the fugitive's claim. *United States v. One Parcel of Real Estate at 7707 S.W. 74th Lane*, 868 F.2d at 1217 n.5; *United States v. $129,374 in United States Currency*, 769 F.2d 583 (9th Cir. 1985), *cert. denied*, 474 U.S. 1086, 106 S.Ct. 868, 88 L.Ed.2d 901 (1986). In *$129,374 in United States Currency*, Gerald Geiger had been appointed conservator of his brother Lewis' estate and attempted to intervene in forfeiture proceedings involving property belonging to Lewis, who was a fugitive on the related criminal charges. The court held that if Lewis, as a fugitive from justice, were deprived of presenting any claim or defense in the action as a result of his fugitive status, the conservator of his estate must likewise suffer the same consequences when he seeks to advance the same claim or defense.
>
> Here, Jaffe fled the jurisdiction of Florida in his land fraud case and did not appear at his second fraud trial. The fugitive from justice doctrine would bar any of Jaffe's claims for damages from his return to Florida by his bondsmen. Mrs. Jaffe's claims are derivative of

her husband's and likewise are barred under the fugitive from justice doctrine.

Further, if Ruth Jaffe is allowed to recover the expenses and claims she sought and obtained in the Canadian judgment, it would permit her to profit from a wrongdoer's activity. The expenses of retaining counsel to defend Sidney in Florida and her visitation in Florida should *rightfully* have been spent, because Sidney should rightfully have returned to this jurisdiction to stand trial. To allow her to collect on any of these items as "damages" would be to reward the bondjumper. In addition, any loss of consortium on her part was in the eyes of the Florida courts a rightful loss, because Sidney should have *rightfully* been separated from her while he stood trial and served time in prison after his conviction. Her loss of consortium was thus the consequence of her husband's own wrong and she should not be allowed to benefit from it. *See Ashwood v. Patterson*, 49 So.2d 848 (Fla. 1951).

## CONCLUSION

For the foregoing reasons the petition for writ of Certiorari should he denied and sanctions imposed. In Mrs. Jaffe's brief before the Fifth District Court of Appeal, she admitted that her damages were those caused by the kidnapping of her husband by Snow and Accredited.

Respectfully submitted,

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## APPENDIX 1

IN THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

CASE NO. CI 91-1593

RUTH JAFFE,

Plaintiff,

vs.

HARDY M. SNOW, JR., and ACCREDITED SURETY & CASUALTY COMPANY, INC.,

Defendants.

_____/

## FINAL SUMMARY JUDGMENT FOR DEFENDANTS

This is an action brought by Ruth Jaffe ("Mrs. Jaffe"), a Canadian resident, for recognition and enforcement of her Canadian money judgment against Hardy M. Snow, ("Snow") and Accredited Surety & Casualty Company, Inc. ("Accredited"), a citizen and resident of the State of Florida and a Florida corporation having its principal place of business in Orange County, Florida.

This case came on for hearing on June 24, 1991, on the parties' cross motions for summary judgment. The Court reviewed the pleadings, the Canadian judgment and complaint and the motions; listened carefully to the arguments of counsel; has read the legal memoranda furnished and studied many of the authorities cited herein, and has given the case careful consideration.

Under Florida law, a party may be granted a summary judgment if there is no genuine issue of material fact as demonstrated by the record made for the summary judgment hearing and such party is entitled to judgment as a matter of law on the undisputed material facts. Fla.R.Civ.P. 1.510(c); *Carpineta v. Shields*, 70 So.2d 573 (Fla. 1954). Since Florida courts have granted summary judgment enforcing foreign nation judgments, see e.g., *Willson v. Willson*, 55 So.2d 905 (Fla. 1952); *Mathor v. Lloyds Underwriters*, 174 So.2d 71 (Fla. 3rd DCA 1965); *Bullen v. Her Majesty's Govt. of the U.K.*, 553 So.2d 1344 (Fla. 4th DCA 1989), rev. den. 567 So.2d 434 (Fla. 1990), it follows that summary judgment can be granted refusing to enforce such a judgment in a proper case. Indeed, plaintiff states that "(a)ll the parties agree that the question of enforcement of Mrs. Jaffe's Canadian judgment is a matter of law for the Court." (plaintiff's supporting memorandum, p.2)

For the purpose of stating the undisputed material facts in this judgment, this Court has relied upon portions of plaintiff's complaint, motion, supporting memorandum, appendices and facts appearing in three reported appellate opinions: *Jaffe v. State*, 438 So.2d 72 (Fla. 5th DCA 1983) ("Jaffe I"); *Jaffe v. Sanders*, 463 So.2d 318 (Fla. 5th DCA 1985) ("Jaffe II"); and *Kear v. Hilton*, 699 F.2d 181 (4th Cir. 1983).

The material undisputed facts necessary for the disposition of the cross motions are as follows. In 1980, Sidney L. Jaffe ("Mr. Jaffe"), a U.S. citizen, was charged in the Circuit Court of Putnam County, Florida, with 28 counts of violations of the "Florida Uniform Land Sales Practices Law", Section 498.033(3), Florida Statutes (1979). A violation of this statute is a felony crime. After

his arrest, Mr. Jaffe posted a $137,500.00 bail bond written by Accredited in order to secure his release from jail, and immediately went to Canada where he and Mrs. Jaffe took up residence. On the day he was scheduled for trial, Mr. Jaffe failed to appear. A motion for continuance filed by his attorneys was denied, a warrant was issued for his arrest, and Accredited's bail bond was forfeited.[1] The prosecuting attorney then filed a criminal charge of Failure to Appear, Section 843.15(1)(a), Fla. Statutes (1979). A violation of this statute is a felony crime. The prosecuting attorney subsequently made two applications to the Florida Governor seeking to extradite Mr. Jaffe from Canada, both of which applications were denied. The record does not show the basis for the denials.[2] Mr. Jaffe remained in Canada and "exhibited a determination to remain there in violation of his undertaking to return to Florida to answer the charges." *Kear* at 181,2.

Snow and Accredited then hired two professional bail recovery agents , Johnsen and Kear, to go to Canada, apprehend Mr. Jaffe and surrender him to the Putnam County Sheriff, which they did.[3] Mr. Jaffe was tried, convicted, and sentenced on all 28 counts of Unlawful Land Sales Practices; however, his convictions and sentences were later reversed. His conviction and sentence for Failure to Appear was affirmed. *Jaffe I*. Contrary to plaintiff's assertion, the Unlawful Land Sales Practices charges were not "unfounded". As the District Court of Appeal made clear in *Jaffe II*, the reversals were not based upon insufficient evidence but rather upon the legal insufficiency of the charging document.

Immediately upon his release from imprisonment, Mr. Jaffe returned to Canada. In 1985, Mr. Jaffe and Mrs.

Jaffe brought suit in the Supreme Court of Ontario, Canada, against Snow and Accredited and other defendants seeking money damages for Mr. Jaffe's tortious abduction.[4] Snow and Accredited appeared in the action through Canadian counsel, and after their motions to dismiss based on grounds of want of personal jurisdiction an forum non conveniens were denied, declined to further defend the action. On November 22, 1990, the Canadian court entered a separate judgment in favor of Mrs. Jaffe only[5] against Snow and Accredited awarding her general damages in the amount of $25,000 Canadian dollars; special damages in the amount of $903,481.47 U.S. dollars and $88,293.56 Canadian dollars; pre-judgment interest in the amount of $498,089.33 U.S. dollars and $62,458.74 Canadian dollars, the total amount to bear interest at the rate of 14% per annum.

Turning now to the law, this Court concludes that there are no treaties or statutes, state or federal, which compel the courts of Florida to recognize foreign nation judgments, nor does the full faith and credit clause of the United States Constitution require it. Rather, recognition or nonrecognition of such judgments in this state depends upon Florida common law principles of judicial comity. *Warren v. Warren* 75 So.35 (Fla. 1917); *Parker v. Parker*, 21 So.2d 141 (Fla. 1945); *Ogden v. Ogden*, 33 So.2d 871 (Fla. 1947); *Pawley v. Pawley* 46 So.2d 464 (Fla. 1950).

In *Beckwith v. Bailey*, 161 So.577,581 (Fla. 1935), the Florida Supreme Court, citing the leading United States Supreme Court case of *Hilton v. Guyot*, 159 U.S. 113, 16 S.Ct 139, 40 L.Ed. 95 (1895), recognized that ". . . comity . . . (in the legal sense) is neither a matter of absolute obligation or of mere courtesy and good will. It is . . . the

recognition which one nation or state allows within its territory to the . . . judicial acts of another nation or state, having due regard to both international duty and convenience, and to the rights of its own citizens. . . . "

In *Warren*, the Florida Supreme Court adopted the general statement of conditions for recognition enunciated in *Hilton*, which are that "(t)here has been full opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court or in the system of law under which it is sitting, or fraud in procuring the judgment, *or any other special reason why the comity of this nation should not allow it full effect*. . . . " *Waren*, 75 So. at 44; *Hilton*, 159 U.S. at 202-03 (emphasis supplied).

Quoting with approval from several treatises, the *Hilton* court recognized the principles that " '(e)very nation must be the final judge for itself, not only of the nature and extent of the duty (to give effect to foreign nation judgments), but of the occasions on which its exercise may be justly demanded' ", 159 U.S. at 109; and that " '. . . the tribunal in which the suit is brought, or from which execution is sought, is, on principle, at liberty to examine into the merits of such judgment, and to give effect to it or not, as may be found just and equitable'." *Id.*

Defendants concede the authenticity of the Canadian judgment and compliance with due process conditions leading to its rendition. They do not claim prejudice or fraud. However, they raise several defenses, although inartfully, none of which have merit[6] save one – that Mrs. Jaffe's judgment should be refused recognition on public policy grounds.

Under Florida common law, the doctrine of comity precludes recognition of a foreign nation judgment where "special reasons" exist. *Hilton*. One of those special reasons is that such a judgment is contrary to the public policy of Florida. *Id.* A foreign nation judgment may be contrary to a state's public policy if it conflicts with the state's interests, is inconsistent with its laws and/or is repugnant to fundamental notions of what is decent, equitable and just in the forum state. *Id. See also Ackerman v. Levine*, 788 F.2d 830,841-2 (2d Cir. 1986) ("A judgment is unenforceable as against public policy to the extent that is it 'repugnant to fundamental notions as to what is decent and just in the State where enforcement is sought.' ") *Tahan v. Hodgson*, 662 F.2d 862,864 (D.C.Cir. 1981); Restatement 2d Conflict of Laws, Sec. 117, comment c (1971); Reese, Judgments Rendered Abroad, 50 Columbia L. Rev. 783,797 (1950) (". . . (o)ur courts should not be required to enforce a judgment based upon a cause of action which offends against our notions of what is decent and just, or which offends against our laws").

Two cases have been cited from time to time by courts and commentators as examples of the application of these principles. In *De Briemont v. Penniman*, 7 Fed. Cas. 309, No. 3, 715 (C.C.S.D.N.Y. 1873), a Federal Circuit Judge refused to enforce a French decree requiring a U.S.

citizen to support his adult French son-in-law. In *In re: Estate of Davis*, 219 N.Y.S.2d 533 (Sup. Ct. 1961), affirmed 227 N.Y.S.2d 894 (1962), the New York Court denied recognition to an Italian judgment which contravened a New York statute disallowing entry of judgments against persons who died during the litigation.

Canadian tort law under which Mr. and Mrs. Jaffe's causes of action were brought is different from Florida law. Both under the common law and statutory law of this state, a surety such as Accredited may arrest the principal within the state, both before and after the forfeiture of a bail bond. *Register v. Benton*, 75 So.2d 187 (Fla. 1975); Sections 903.02 and .29, Florida Statutes (1979). Under Florida common law, the surety may delegate to another person the right to make the arrest (but if the surety delegates a law enforcement officer, then the procedure set forth in Section 903.29 must be followed). *Register*. "One under bail is in the vicarious custody of his bondsman whose 'dominion is a continuance of the original imprisonment, and the principal may be apprehended by his bondsman even under extreme circumstances.' Taylor v. Taintor, 16 Wall 366 83 U.S. 366, 21 L.Ed. 2d 287. . . . " *Id.* at 188. Consequently, had the apprehension of Mr. Jaffe by defendants' bail recovery agents occurred within the territorial boundaries of Florida, Mr. and Mrs. Jaffe would have had no cause of action under the tort law of this state. Of even more significance, the public policy of Florida as expressed through its decisional and statutory law expressly favors and sanctions the apprehension of a bond jumper within the state by his surety or its agent.

Furthermore, Mr. Jaffe's act of failing to appear in court was a breach of his contractual obligation to Accredited under their bail agreement and a crime against the State of Florida for which he was duly convicted. It was his wrongful criminal act in jumping bail which directly caused Snow and Accredited to commit the acts found to be tortious in Canada which formed the basis of Mr. and Mrs. Jaffe's Canadian action against them. If Mr. Jaffe had obtained and sought to enforce a Canadian judgment against defendants here, to allow it would not only be inconsistent with this State's interests but patently inequitable, for Equity says that that [sic] "no one shall be permitted to take advantage of his own wrong, or found any claim upon his own inequity, or profit from his own crime." *Ashwood v. Patterson*, 49 So.2d 848, 850 (Fla.1951).

Finally, since under principles of comity public policy reasons would foreclose enforcement of any judgment Mr. Jaffee [sic] has obtained or might obtain in the Canadian action, it logically follows that the same is true of Mrs. Jaffe's judgment. This is so because the claim upon which it was based was intertwined with, solely derivative of and utterly dependent upon that of her husband. And if she were to collect all or a part of her judgment through the processes of this Court, he would stand to benefit, even if only indirectly.

In closing it should be stated that nothing in this judgment should be construed as condoning the acts of Snow and Accredited and their agents which caused the events in Canada. Now that the *Kear* case is on the books, the criminal laws of Canada and the extradition treaty between our two countries should provide a sufficient

deterrent against that type of activity in the future. This Court agrees with the suggestion of Judge Murnaghan in *Kear* that it might be profitable to pursue through diplomatic and political channels a system of cooperation between officials of our two countries for the return of all American bail jumpers. Finally, lest it be thought otherwise, this Court has the utmost respect for the nation of Canada, its laws, its jurists and its legal system, and only holds that because of the peculiar facts and circumstances of this case, it falls within those very few exceptions where an American state court should decline to enforce a foreign nation's judgment.

Accordingly, based upon all of the foregoing, it is **ORDERED** and **ADJUDGED** that:

1. Plaintiff's Motion for Summary Judgment is denied.

2. Defendants' Motion for Summary Judgment is granted, and Final Summary Judgment is hereby entered in favor of defendants Hardy M. Snow and Accredited Surety and Casualty Company, Inc. Plaintiff will take nothing by this action and go hence without day. Defendants shall recover their taxable costs, if any.

3. Both parties' motions for attorney's fees and other pending motions are denied.

DONE and ORDERED in Chambers at Orlando, Orange County, Florida, this 26 day of July, 1991.

/s/ ROM W. POWELL
CIRCUIT JUDGE

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies hereof have been furnished to James L. Simon, of Holland & Knight, Post Office Box 1526, Orlando, Florida, 32802, attorney for plaintiff, and Sharon Lee Stedman, of Rumberger, Kirk, Caldwell, Cabaniss, Burke & Weschler, Post Office Box 1873, Orlando, Florida, 32802, attorney for defendants, by United States Mail this 26 day of July, 1991.

/s/ Marilee A. DeLoy
Judicial Assistant

---

[1] Accredited paid the $137,500 to Putnam County. Upon Mr. Jaffe's return to custody there, $37,500 was remitted to Accredited. Putnam County kept the remaining $100,000.

[2] Unlawful Land Sales Practices and Failure to Appear are not among the extraditable offenses listed in the treaty between our two countries. See Art. 2, Treaty on Extradition Between the United States of America and Canada (1971) and Annexed Schedule, para.s [sic] 1-30. Consequently, Canada would not have been obligated to surrender Mr. Jaffe on those charges even if formal extradition request had been made by the Florida Governor.

[3] The record does not reflect that the circumstances of Mr. Jaffe's apprehension by the bail recovery agents were aggravated. Using a ruse, the agents took Mr. Jaffe into their custody, placed him in mechanical restraints, transported him by automobile across the border into the United States, allowed him to telephone his son, then transported him by airplane to Florida and after landing, took him by automobile to the Putnam County Jail. See *Kear*.

[4] In paragraphs 62 and 63 of her Complaint in the Canadian action, Mrs. Jaffe alleged the following damage elements: loss of consortium; mental and physical suffering; loss of income; expenditures of time and effort in an "effort to redress

the wrongful actions of the defendants" and in the administration of her husband's affairs; expenses in visiting and obtaining her husband's release from his wrongful imprisonment.

[5] Curiously, the record does not reflect that a judgment was entered in favor of Mr. Jaffe.

[6] Defendants' "two dismissal" defense cannot be maintained for the simple reason that Mrs. Jaffe was not a co-plaintiff with Mr. Jaffe in one of the two federal suits which were voluntarily dismissed, and even if she had been a co-plaintiff in both, those two suits were based upon alleged violations of the Federal Civil Rights Act and other tort claims, whereas the complaint herein is based upon a claim for recognition of a foreign nation judgment, an entirely different claim.

I, the undersigned, do hereby apply to the ACCREDITED SURETY & CASUALTY COMPANY, INC., to act as my bail in the amount of $ 137,500 00 In the Circuit court of Putnam Co. wherein I am charged with 28 Cases involving Land Fraud

# TERMS AND CONDITIONS

The following terms and conditions are an integral part of this application for appearance BOND # TA 530409 thru 530418; 530426 thru 530436; 534501 thru 534507

for which ACCREDITED SURETY & CASUALTY COMPANY, INC., (hereinafter called the SURETY), or its Agent shall receive a premium in the amount of ($ 13,750 00) Dollars, and the parties agree that said appearance Bond is conditioned upon full compliance by the principal of all said terms and conditions and is a part of said bond and application therefore.

1. The SURETY, as bail, shall have control and jurisdiction over the principal during the term for which the bond is executed and shall have the right to apprehend, arrest and surrender the principal to the proper officials at any time as provided by law.

2. In the event surrender of principal is made prior to the time set for principal's appearances, and for reason other than as enumerated below in paragraph 3, then principal shall be entitled to a refund of the bond premium.

3. It is understood and agreed that the happening of any one of the following events shall constitute a breach of principal's obligations to the SURETY hereunder, and the SURETY shall have the right, to forthwith apprehend, arrest and surrender principal, and principal shall have no right to any refund of premium whatsoever. Said events which shall constitute a breach of principal's obligations hereunder are:

(a) If principal shall depart the jurisdiction of the court without the written consent of the court and the SURETY or its Agent.

(b) If principal shall move from one address to another within the State of California without notifying the SURETY or its agent in writing prior to said move.

(c) If principal shall commit any act which shall constitute reasonable evidence of principal's intention to cause a forfeiture of said bond.

(d) If principal is arrested and incarcerated for any other offense other than a minor traffic violation.

(e) If principal shall make any material false statement in the application.

Resident Phone 415 7[illegible]

Alias _____ Neighbor Phone 771 52[illegible]

Nickname _____ Job Phone _____

1. Name SIDNEY LEONARD JAFFE

2. Address 1000 GREEN ST SAN FRANCISCO CALIF. How Long 3 YR.

Previous Address 44 CHARLES ST WEST TORANTO CANADA How Long 8 YRS

3. Employer ATLANTIC COMMERCIAL DEVELOP SO FRANCISCO How Long 4 YR.

Former Employer SELF EMPLOYED INVESTOR How Long LIFE

4. D.O.B. 12-22-26 Where NEW YORK CITY How long this county _____

Sex M Race W Height 6'3" Weight 185 Eyes BRN Hair GRAY Comp. MED

Occupation EXECUTIVE Scars or marks N/A

5. Husband or wife RUTH Employer H/W How long married 30 YRS

6. Children - Age _____ School _____

7. Own or rent home _____ From whom 1000 GREEN ST. CORP.

8. Full description of auto AUDI 79 WHT Tag No. _____

Where financed _____ Amt. owed _____ BOND REGISTERED BY: E

9. Dr. Lic. _____ S.S. 232-16-3964 Life Ins. Co. _____ INFORMATION TAKEN BY: [illegible]

10. Name and number of any labor union, club, lodge or etc. NONE FILED BY: _____

11. List all previous arrests NONE

12. Bonded before by NONE Still Indebted _____

| | NAME | OCCUPATION | ADDRESS – PHONE |
|---|---|---|---|
| Attorney | BRUCE GRUER | ATT | 1 BYCANE BLVD MARIN TERR. – |
| ~~Best friend~~ | Barri Jurupa | atty: | |
| References | | | |
| | HAROLD JAFFE | ATT | 100 WEBSTER ST OAKLAND Phone = 415 444 2261 |
| Buddy | | | |
| Father | DEC. | | |
| Mother | DEC. | | |
| Brother | ROBERT JAFFE | ATT | NEW JERSEY |
| Brother | | | |
| Sister | | | |
| ~~Son~~ | BRANDON JAFFE | STUDENT | U. of BRITISH COLUMBIA |
| Brother-in-law | | | |
| Sister-in-law | | | |
| | M. JACOBSON | | 3955 |
| Mother-in-law | | | |
| Sister | | | |
| Sister | | | |

For good and valuable consideration, the undersigned principal hereby agrees to indemnify and/or hold harmless, the Accredited Surety & Casualty Company, Inc., its agents for any and all losses not otherwise provided by law, or rules and regulations promulgated under any applicable [illegible]

Executed at _____ this _____ day of _____ 19__

_____ Signature of Applicant

Date

Job Change

Address Change

**APPENDIX 3**

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

SIDNEY L. JAFFE and
RUTH M. JAFFE,

Plaintiffs,

vs.

STEPHEN L. BOYLES,
et al.,

Defendants.

No. 85-1128-Civ-J-16

(Filed Nov. 5, 1986)

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ORDER OF DISMISSAL WITHOUT PREJUDICE

This cause came before the Court for the hearing on the Order to Show Cause entered on October 3, 1986, at which the Court heard argument on defendant's, ACCREDITED SURETY AND CASUALTY CO., INC. ("Accredited"), Motion for Sanctions pursuant to Rule 37(d), *Fed.R.Civ.P.*, filed August 19, 1986, and Plaintiffs' Motion to Dismiss Action Without Prejudice pursuant to Rule 41(a)(2), *Fed.R.Civ.P.*, filed August 29, 1986. After thorough review and consideration of the pleadings filed herein and the arguments of counsel for the parties, the Court concludes that this action should be dismissed without prejudice.

In its Motion for Sanctions, Accredited requests that this cause be dismissed with prejudice for Plaintiffs' failure to cooperate in discovery. The Court would be inclined to grant said motion and dismiss this action with

prejudice in light of Plaintiffs' flouting of the authority and jurisdiction of this Court and the Federal Rules of Civil Procedure. *See, e.g., Jaffe v. Grant*, 793 F.2d 1182, 1189-90 (11th Cir. 1986). Plaintiffs unjustifiably failed to appear at depositions noticed by Accredited and scheduled to take place in Jacksonville, Florida. *See* Rule 3.04(c), *Local Rules of the United States District Court for the Middle District of Florida*. Further, Plaintiffs defied this Court's Order to Show Cause entered on October 3, 1986 and failed to appear at the aforementioned hearing. In spite of Plaintiffs' conduct, however, the Court concludes that it was divested of jurisdiction to entertain Accredited's Motion for Sanctions when Plaintiffs filed on August 29, 1986 their Notice of Dismissal pursuant to Rule 41(a)(1), *Fed.R.Civ.P.*, as to Defendants, ACCREDITED, HANK M. SNOW, TIMM JOHNSEN, DANIEL J. KEAR, and JOSEPH MILLER.

As to Defendants, STEPHEN L. BOYLES, WILLIAM HATCH, GLENN E. NORRIS, CLYDE SHOEMAKE, and LOUIS R. STARK, the Court finds that they would suffer no plain legal prejudice other than the mere prospect of a second lawsuit if this cause were dismissed without prejudice. *See McCants v. Ford Motor Company, Inc.*, 781 F.2d 855, 856-57 (11th Cir. 1986).

Accordingly, it is now

ORDERED and ADJUDGED:

1. That, as to Defendants, ACCREDITED, HANK M. SNOW, TIMM JOHNSEN, DANIEL J. KEAR, and JOSEPH MILLER, this Court's Order to Show Cause entered on October 3, 1986 be and the same is held for NAUGHT,

without prejudice to Defendants' rights under Rule 41(d), *Fed.R.Civ.P.*

2. That Plaintiffs' Motion to Dismiss Action Without Prejudice be and the same is hereby GRANTED, and this cause is hereby DISMISSED without prejudice as to Defendants, STEPHEN L. BOYLES, WILLIAM HATCH, GLENN E. NORRIS, CLYDE SHOEMAKE, and LOUIS R. STARK.

DONE and ORDERED in Chambers at Jacksonville, Florida this 5 day of November, 1986.

/s/ Joe H. Moore
UNITED STATES DISTRICT JUDGE

Copies to:

✓ Bruce A. Goldstein, Esquire
✓ James C. McKay, Esquire
✓ Shirley A. Walker, Esquire
✓ Francis M. McDonald Jr. Esquire
✓ Mark Mahoney, Esquire
✓ Paul J. Suozzi, Esquire
✓ Ed Leinster, Esquire
✓ Joe C. Miller, Esquire
✓ U.S. District Judge
✓ Courtroom Deputy

## APPENDIX 4

Court File No. 498/66

COURT OF APPEAL FOR ONTARIO

RE: HER MAJESTY THE QUEEN (Respondent) v. DANIEL JOHN KEAR and TIMM JOHNSEN (Appellants)

BEFORE: BROOKE, KREVER and GALLIGAN JJ.A.

COUNSEL: FOR THE APPELLANTS
D.R. O'Connor, Q.C., Robert Russell and Diane Oleskiw

FOR THE RESPONDENT
Brian Gover and Scott Hutchison

HEARD: September 28, 29 and October 2, 1989

ENDORSEMENT

During argument counsel for the appellants raised three grounds of appeal from conviction.

1. It was submitted that the learned trial judge misdirected the jury when he said that the specific intent prescribed by s.279(1)(b) did not require the Crown to prove that the appellants knew that the removal of Jaffe from Canada was unlawful according to the law of Canada. We are of the opinion that the *mens rea* of the offence of which the appellants were convicted does not include subjective knowledge that their transportation of Jaffe out of Canada was unlawful.

2. It was submitted that they had an honest belief that they were acting lawfully, which belief was officially induced. The court did not call upon the Crown to reply to this ground of appeal because it was of the opinion,

assuming without deciding that the defence of officially induced error applies to indictable offences, that there was no evidence which would give an air of reality to that defence in this case.

3. It was submitted that the appellants had lawful authority to apprehend Jaffe and return him to the court in Florida from which he had absconded. They based the claim of lawful authority upon the agreement, Exhibit 10, and upon the common law powers of a surety to seize an accused and deliver him to the court before whom he must appear. Those powers under the contract and at common law are undoubtedly broad. However, no Canadian case was cited to us which suggests that those powers extend across international boundaries. There is jurisprudence in the United States which holds that the authority of an American surety to seize an absconding principal can only be exercised within the territorial bounds of the United States itself. See *Kear v. Hilton* (1983), 699 F. 2d 181 at p.182 and *Reese v. United States* (1869), 76 U.S. 13. In our opinion such foreign contracts or common law rights, even though recognized in the foreign country, cannot authorize the violation of Canadian sovereignty. The policies enshrined in the *Canadian Bill of Rights*, which was in force at the time of this offence, and in the *Canadian Charter of Rights and Freedoms*, which has since come into force, are conclusive of this issue. The power of arrest which the appellants had in Florida and perhaps in other parts of the United States were of no effect in Canada. The appellants had no other source of power in Canada and therefore they were without lawful authority when they seized Jaffe and took him out of Canada.

The appeals from conviction must therefore be dismissed.

We think the appeals from the sentences imposed by the trial judge should succeed. The trial judge rightly considered the offence to be a grave affront to the sovereignty of this country. Although it is not excused, the gravity of the affront is mitigated by the circumstances of the offence. In consideration of the surety putting up $137,000 U.S. to secure his freedom from jail and after being told by the surety that if he did not appear at court they would come and get him anywhere, Jaffe agreed in writing that the surety would have the right "to forthwith apprehend, arrest and surrender" him. In violation of his obligations to the court which had released him from jail and to the prejudice of the surety's $137,000, Jaffe, who was then an American citizen, absconded and fled to this country where he managed to obtain Canadian citizenship. There is nothing favourable that can be said about his conduct.

The trial judge found that both appellants had a general overriding belief that the contract constituted some authority for them to apprehend Jaffe even though that belief was arrived at negligently. It is also clear that the purpose of seizing Jaffe was to return him to the court that had jurisdiction over him.

Both appellants are men of good character and repute. The trial judge commented "in my many years on the bench I have never seen such an outpouring of support for two individuals".

It is our opinion that the very conviction of those men of one of the most serious offences known to Canadian law would go a long way towards the vindication of Canada's sovereignty and towards the repudiation of their affront to it.

We have received evidence that since their trial the convictions have had a serious prejudicial effect upon the lives of the appellants. In addition, each is faced with impending domestic tragedy which require their physical and moral support.

Having regard to all of the circumstances and taking particular account of the evidence of what has transpired since their convictions we think the interests of justice would be served if the sentences imposed upon the appellants by the trial judge were reduced to time served. Leave to appeal is granted. The sentence appeals of the appellants are allowed accordingly. The Crown's application for leave to appeal sentence is granted but its appeal is dismissed.

October 18, 1989 /s/ Illegible

/s/ Illegible

/s/ Illegible

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## APPENDIX 5

* * *

60. The plaintiff Sidney Jaffe pleads that by reason of the foregoing the defendants are liable for the said damage.

61. The plaintiff Sidney Jaffe pleads that much of the said damage was suffered in the City of Toronto, and that he continues to suffer the said damage in the City of Toronto.

62. The plaintiff Ruth Jaffe pleads that she has expended considerable time and effort to redress the wrongful actions of the defendants and in the administration of the affairs of the plaintiff Sidney Jaffe during the period of his wrongful imprisonment, and incurred expense in travel to and from Florida and otherwise to visit and to obtain the release of the plaintiff Sidney Jaffe from his wrongful imprisonment.

63. The plaintiff Ruth Jaffe further pleads that by reason of the foregoing she has suffered and continues to suffer serious damage, by reason of her mental and physical suffering, loss of income, the aforesaid expenditures, and the loss of guidance, care and companionship of the plaintiff Sidney Jaffe during the period of his imprisonment. The plaintiff Ruth Jaffe pleads that she has suffered and continues to suffer this damage in the City of Toronto.

* * *